

# A Study of Highway Laws

MASON J. MAHIN, ASSISTANT DIRECTOR  
Laws Division, Automotive Safety Foundation,  
Washington, D. C.

In the past few years, and particularly since the enactment of the new Federal Aid Act, highway law has become the focal point of attention.

This represents a definite shift in emphasis from what always has been considered our chief problem—*getting* the highway dollar—to the question of *spending* it effectively.

With this shift in emphasis the public spotlight now has been turned on the highway official and his ability to accomplish the big job ahead. Unless he takes every reasonable step to ensure efficiency in his operations, highway management will be vulnerable to public criticism.

Insofar as the law is concerned, the specific question now being asked is: do our highway officials have adequate legal authority to carry out the gigantic new highway program in accordance with the time-table set by Congress? And equally important—in a manner that will give the taxpayer full value for the billions of future tax dollars earmarked for highway purposes?

I think highway officials *are* facing up to the challenge and are making every effort to bring about needed improvements in our highway statutes.

Here in Indiana, as elsewhere throughout the country, the law has become an issue of first rank importance—in the legislatures, at highway conferences, in public information media, in fact, wherever highway matters are discussed.

I cannot recall any previous year in which so much legislation affecting the basic authority of the highway official has been considered.

For the past several years on an increasing scale, highway laws have been discussed on the programs of every national, regional and state highway conference; at meetings of the Highway Research Board, the American Association of State Highway Officials, the American Road Builders Association; at Road Schools such as this; and at similar conferences.

Nor has this interest in the legal side of highway development been confined to any one level of government.

For example, the Honorable George H. Fallon, Chairman of the House Subcommittee on Public Roads, indicated recently he plans to introduce a bill in Congress that would consolidate and clarify all the federal aid highway acts. He called the present federal highway law a "maze of ambiguous and contradictory provisions, piled one upon the other since the first highway act of 1916."

Recent estimates by the U. S. Bureau of Public Roads indicate that about half the new highway funds will be spent in urban areas. In face of this, the U. S. Conference of Mayors has recommended that special urban units be established in all state highway departments to better coordinate the work of the department and of city authorities. Such a proposal would call for an amendment in the federal aid act and this now is being considered by the Senate Subcommittee on Roads.

In Indiana, your own fine study of county highway administration, conducted by Professor Petty of Purdue and Professor Stoner of Indiana University, is another indication of the kind of attention currently being directed toward improving management at that level of jurisdiction.

### *Need for Highway Law Improvement*

While the new federal aid program has generated this widespread concern over laws governing highway operations, the program is not entirely responsible for steps underway to modernize the laws.

The problem itself has been in the making for many years because basically many of our highway statutes were—and to a considerable degree still are—rooted to outdated concepts of highway management.

Mr. Fallon's description of the Federal law aptly fits the present condition of many of our state statutes. The simple fact is that we just never have bothered to keep abreast of the times as far as our highway laws are concerned.

I recall this from some of my own experiences in Kansas which, I am sure, were little different from those in other states. For a number of years up to 1953, I was General Counsel for the Kansas Highway Department.

The law, particularly in my earlier years with the Department, was considered by the engineer and lawyer alike a relatively minor

factor in the scheme of things. We were too busy trying to build highways as fast as we could with the limited funds available to catch up with our most urgent and immediate needs. And we had plenty of catching up to do when wartime controls finally were lifted and construction materials at last made available.

This left little time or money for other matters, and the law was no exception.

Actually, we thought our law, for the most part, was good enough. In any case, we did the best we could with what we had and we *were* managing to build highways.

When an engineer came to me for advice I would tell him what he could or could not do legally and the matter generally ended there. Our contacts were limited to those occasions when he was, or thought he was, getting into legal difficulties.

Each of us worked in our own spheres of activity and tried to fit our operations to the authority delegated to the highway department by the legislature. Or perhaps, I should say legislatures, because the total authority granted was the product of many legislative bodies and, as a result, it bore the imprint of different eras of highway development. We gave a great deal of thought to what the law was, but little or no concern was expressed over what it should be.

When we ran into real difficulties, of course, an attempt was made to get another amendment through the legislature that might take care of the immediate problem and this was done from time to time. But even in those instances my relationship with the engineer was on an "arm's length" basis and we never really got together for a complete mutual understanding of the problem.

Consequently, as has been the case in many other states, our highway law gradually developed into a patched up legal instrument.

But this "make the law do" philosophy couldn't survive, of course, in Kansas, anymore than it could in any other state. We were entering a new era of highway development and we needed modern legal tools in every phase of highway operations to do the job.

We began to recognize this in Kansas. And since leaving the Department, I have worked closely with highway officials in other states on the improvement of their laws and have seen this new philosophy widely applied.

As long-range plans based on detailed engineering and fiscal studies were being launched, highway officials no longer could rely on a piecemeal solution to their legal problems.

Guiding principles in this new approach to upgrading the law are:

1. That all highway laws must be critically appraised in terms of present and future needs. To build modern highways a state must have an integrated highway code covering all highway functions, based on modern policies and practices of highway management. This applies to all highway agencies—state, county and municipal—with the law providing for cooperative relationships to the highest practicable degree among all jurisdictions. That this cooperation should extend, where necessary, into such activities as planning and programming, design and maintenance standards, engineering consulting services, system classification, access control, right-of-way acquisition, research, financing, and in other areas of mutual responsibility.
2. That to accomplish this requires close teamwork between the lawyer and the engineer and both must work from a common base of understanding. Their talents must be combined if the legislative drafts developed by the lawyer are to reflect the authority the engineer needs to fulfill his responsibilities.

And what has been the practical effect of this concept? Well, a couple of years ago, for example, Nebraska practically scrapped its entire highway code and brought it more nearly in line with current needs.

Another example is Michigan, which now is engaged in a comprehensive study of its entire law in an effort to modernize and codify it. At present, I might add, the Michigan highway department is operating under 100 separate public acts covering a thousand sections of highway law, a number of which were adopted as long ago as 1883.

Here is how Joseph A. Sullivan, Deputy Attorney General for Michigan, described the situation in his state:

"... even experienced attorneys who have worked with the highway officials confessed uncertainty; and no wonder, too, that so many attorney general's opinions were requested. If the lawyers themselves were puzzled as to 'what is the law,' what must the engineer's reaction have been when he flipped open the books to get a quick look at the highway law."

And just the other day I read in the *Burlington Free Press* that the highway officials of Vermont were meeting with the House

of Representatives, sitting as a Committee of the Whole. The purpose was to give the officials an opportunity to explain their proposals for: "a comprehensive overhauling of Vermont's complex and conflicting highway laws."

Other states facing similar problems have also taken steps to resolve them through detailed appraisals of their law. Several years ago North Dakota was perhaps the first state to review and re-evaluate its entire highway code. Florida, Louisiana, and others since have followed suit. In practically all of this work, state, county and city officials—both legal and engineering—are fully and jointly participating.

During the current legislative sessions further changes have been considered, in the states mentioned and in many others, to expedite highway programs under the new federal aid act. Much of this legislation, no doubt, has been of an emergency character to take care of the most compelling needs. Certainly, this is the case in Michigan and Minnesota, where I am informed, the officials consider present proposals as stop-gap legislation. Plans are being laid for a complete modernization of every aspect of the law, after careful study, probably in 1958.

### *Legal Research*

Beyond these individual efforts taking place across the land, there is a special legal research project now in progress I would like to tell you about. Next to the new Federal Aid Act, it is perhaps the most significant development that has taken place in the highway field in recent years.

The project was initiated at the request of the American Association of State Highway Officials and is being conducted under the auspices of the Highway Research Board. This program covers a full-scale study of all state highway statutes to determine their comparative status and adequacy and thereby provide a factual foundation for their improvement.

Obviously, a study of such dimensions was a mammoth undertaking. In fact, some people said it couldn't be done. But it is being done. Much advance planning and organizational work were involved at the outset. Initially the project got underway on an exploratory basis. Finally, in 1955 the program was launched formally with appointment of a Highway Laws Committee. It was recognized that all levels of government had a stake in the problem and that the engineering and legal professions must join forces in its solution. The Committee membership reflects that decision.

A research staff of five attorneys, with headquarters in Washington, D. C., was employed to conduct the basic research. Financing is being provided on a matching basis by the U. S. Bureau of Public Roads and the several state highway departments. The departments also have furnished the staff with copies of the highway statutes and a permanent library is being established.

More recently, each department has named a liaison representative to work with the Committee and supply the staff with information on the latest legal developments in the highway field. Richard G. Stewart, deputy attorney general, represents Indiana in that capacity.

The research project covers an analysis of state constitutions, highway statutes and pertinent court decisions of all states. This involves study of about 28 individual categories of highway law, including authority relating to land acquisition, with special emphasis on future use, system classification, intergovernmental relations, control of access, and construction and maintenance, to mention just a few.

The objective is to point up and discuss the important principles of law governing each highway function. Thus, for the first time, we will have the essential facts covering the legal aspects of every highway responsibility for the information and guidance of all of the states.

Reports are being issued as the research is completed. The one on relocation of public utilities was released some time ago. Reports on control of access and acquisition of right-of-way for future use should be off the press very shortly. In progress, and at varying stages of completion, are studies of the statutory and case law on land acquisition, system classification, intergovernmental relations, federal aid and legislative intent. All have a more immediate bearing on the federal aid program and for that reason have been given priority in our study schedule.

Meanwhile, our Committee and the staff, from time to time, are making progress reports of our findings before highway groups. In addition, preliminary, mimeographed drafts of all completed research have been made available to the highway departments.

### *Indiana's Highway Laws*

Now, what about the situation in Indiana? Obviously, I am in no position to tell you what is right or wrong about Indiana's highway laws, except possibly insofar as our present research findings show. But even here, any observations I might make would have to

be limited to the status of Indiana's law in relation to that of other states. For, at this point, our program is merely ascertaining the substantive elements found in present highway statutes. That, in itself, does not mean that a given law containing all these elements is necessarily adequate to our needs. Any improvement in today's legal concepts must await further study and developments. And in this study, highway officials such as you must play a leading role if the law is to embody the kind of authority you will need to build our future highways.

For example, in our review of the control of access statutes we found that collectively, that is, on a composite basis, the laws of the several states contain 20 substantive elements which appear essential to a statute of this kind. Few, if any states, had all of them; in most states a number of elements are lacking.

We found, for example, that Indiana had every substantive provision but one—it did not give the highway department authority to acquire right-of-way through a fee simple title. While this represented only one omission in an otherwise complete law, it was an important one. That deficiency has now been corrected, as I understand it, under House Enrolled Act No. 369, enacted during the recent legislative session. By present standards, therefore—and I want to emphasize *present*—Indiana has an excellent control of access law.

Another void in Indiana's law, at least up to passage of Act 369, was lack of specific authority to acquire right-of-way for future use, including the power to sell or exchange property no longer needed for highway purposes. That, too, has now been corrected and represents an enormous stride forward. We of the Committee are pleased that your officials saw fit to submit the draft of this proposal to our research staff for comment. In this connection I should point out that apart from the basic research now going forward, the Committee and its staff are continually being called on by the states to review specific proposals or to furnish special data.

For example, during the past several months we have been asked to review proposed expressway legislation for Arizona; to supply Georgia with information concerning legal aspects relating to median strips; to provide Arkansas with a legal bibliography on control of access; to suggest legislation to Louisiana for an exchange of property provision in their right-of-way acquisition statute; to give assistance to Nevada with regard to a proposed state laws project; and to make a special legal analysis on land acquisition au-

thority in connection with the AASHO Road Test in Illinois. These are just a few samples of the type of special service our research staff is rendering.

There is every reason to believe the law research program will become progressively more helpful in smoothing the way legally for highway officials at every jurisdictional level. In so doing, I am sure you will agree the program will make an important and constructive contribution to future highway progress in our nation.